IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT

The State of Rajasthan vs. Banta Singh

D.B.Cri. Appeal No.169/1986

Under Section 378 (1) Cr.P.C. against the judgment dated 06.11.85 passed by the Addl.Sessions Judge No.2, Hanumangarh, in Sessions Case No.50/1985.

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Date of Judgment: 24th September, 2007.

PRESENT

HON'BLE MR.JUSTICE BHAGWATI PRASAD
HON'BLE MR.JUSTICE MUNISHWAR NATH BHANDARI

Mr.JPS.Choudhary, Public Prosecutor.
Mr.S.S.Dhillon for Mr.H.S. Kharlia for the complainant.
Mr. Niranjan Singh for Mr. M.K.Garg for the accused respondents.

BY THE COURT :(PER HON.MR.BHAGWATI PRASAD,J.)-

The present appeal is filed by the State against the acquittal of the accused respondents in Sessions Case No.50/1985 dated 06.11.85.

The prosecution was initiated on the basis of an information lodged by Atma Singh at about 10.00 PM on 21.06.83 at Police Station Hanumangarh Junction. The complainant informed the police that his sister Gurdeo Kaur is married to Banta Singh, Sarpanch about 10-12 years before. Apart from her sister, Banta Singh also has another woman in his fold. The presence of second lady, in the family, has caused general dissensions in the family. Dilawar Singh and Nathu Singh came to the village of Atma Singh on 21.06.83 and informed him that his sister , Gurdeo Kaur has died. On receiving this information, Atma Singh came to Hiranwali. There Balwant Singh was present. He was informed that Gurdeo Kaur @ Gebo had sent a message a day before that her inlaws are maltreating her. When he looked at the dead body of Gurdeo Kaur, he apprehended that she has been administered poison, or she has been killed by mechanical injuries.

On such information, proceedings under section 174 Cr.P.C. was started. The Investigating Officer, Richpal Singh, conducted part of the investigation, including postmortem etc. But no charge sheet was filed in the meanwhile. Therefore, on 02.11.83 a complaint was presented by Atma Singh in the court of Judicial Magistate , Hanumangarh. The same was sent to police for

investigation under section 156 (3) Cr.P.C. After this, an application to the Dy. Superintendent of Police, Hanumangarh was also made and it was complained that the charge sheet is not being filed. After all these proceedings charge sheet was filed in the court of Judicial Magistrate, Hanumangarh under section 302 /34 IPC against three accused persons. After charge sheet being filed, the case was committed and made over to the trail court. The trial court, after hearing the arguments, framed charges under section 302 IPC and in the alternative under Section 302/34 IPC. Accused denied the charges and claimed trial.

At the trail, 9 witnesses were examined. 15 documents were exhibited. Accused were examined under section 313 Cr.P.C. The two accused denied their complicity in the crime and accused Banta Singh stated that he had come to Hanumangarh on the fateful day. There, he was informed by Mukhtiar Singh, and Jeevan Singh , who came on Motor Cycle that his wife has died. Then he sent his colleagues to fetch his in laws and he came to the village. He further stated that he was not involved in any crime.

In defence, 3 witnesses were examined and four documents were exhibited. The trail court, after considering the case

of the prosecution, acquitted the accused appellants of the charges levelled against them. The trial court observed that at best, in the postmortem report, the reason of death has not been specified by the doctor, who conducted the postmortem. Viscera were sent for chemical analysis. In the viscera report it has come that the contents of the viscera had the traces of insecticide. The trial court considered the statement of the PW/4 Dr.Narendra Godara , who has stated in his court statement that it was not possible to formulate the cause of death, therefore ,viscera was sent for chemical analysis . The viscera report stated that traces of insecticide were found in that . Then the trial court considered that it has not come on record as to what was the amount of insecticide utilised and then relied on a portion of a book on jurisprudence by R.M.Jhala and V.B.Raju IVth Edition, page 466 and quoted in the judgment the following portion:-

> "The concept of poison in Science is vague and ill-defined. The harmful effect produced by a substance does not depend necessarily on the substance, but the amount of the substance. The way in which it is administered and above all and specially the purpose for which the substance is administered. One point is clear so far as the poisons are concerned. The substance should

> be inherently capable of proving harmful to the human body. Most of such substance are being utilized for purposes of treatment of disease and come within the category of drugs."

Thus, the trial court was of the opinion that it has not been proved by the prosecution whether the consumed insecticide was to that extent of that it was possible to kill the man by that much of the amount. The trial court also placed reliance on a Medical Jurisprudence & Toxicology Book by Pareekh Page 743-744, wherein it has been said by the authors as follows:

> "Some times the Chemical Examiner reports the presence of phosphates in the viscera, this has no significance, finding of phosphorus in free from only is so significance. It is widely held that every person regularly kills at a certain dose- The fatal dose so commonly referred to in cases of criminal poisoning. Minimum lethal dose or M.L.D.
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> "The fatal results, when plotted graphically against the dose given , demonstrate that the relation between the dose administered and the effect observed

> follows an unusual pattern, thus bringing to fight a novel biological relation between the two events under investigation. ”

From the aforesaid medical opinions, the learned Judge came to the opinion that it was not clearly established that the cause of death was poison. Then the trial court has considered the factum that the complaint was filed nearly 1 year and 5 months after the incident, and thus, delay has also been held fatal against the prosecution case.

Then the trial court has discussed the evidence of PW/1 Mehar Singh, who was projected as an eye witness. Mehar Singh has stated in his statement that he has not deposed before anybody that he had seen the incident. Such witnesses who say that they have not deposed about the incident, can hardly be believed. Further, it has not come up on record as to how Atma Singh, complainant, knew that Mehar Singh had seen the incident. The reason for being at the scene of occurrence is also not convincing, according to the trail court. Then this has also come in his statement that Banta Singh fired a gun at him . Such conduct is abnormal, according to the trial court, therefore, this witness has not been believed.

Further, the place from where he is said to have seen the occurrence, according to PW/8, Richpal Singh, it was not possible to see the occurrence from that place. Thus, this eye witness was another eye witness, apart from the one put forward by the prosecution, in the extra judicial confession. Extra judicial confession has been sought to be proved by the prosecution by the testimony of PW/3 Atma Singh, PW/2 Balwant Singh, PW/7 Jagir Singh and PW/5 Sarjeet Singh. According to the trial court, the name of PW/5 Sarjeet Singh is not in the first information report. This witness, therefore, is not a witness who can be relied . As regards the other witnesses, the trial court was of the opinion that PW/3 Atma Singh omitted to say about this fact , Ex. D/3 in his statement . Similarly, PW/7Jagir Singh has also not stated about this in his police statement Ex.D/4. PW/3 Atma Singh and PW/7 Jagir Singh have not stated in their police statement regarding the extra judicial confession. The fact of extra judicial confession was also not admitted by the trial court. The recovery of the bottle of Ekalux EC 25 was found to have been made from a place accessible to every person . Therefore, that recovery was not pressed against the accused.

The trial court, further said that since there were two

ladies in the family, possibility of deceased having consumed poison to eliminate herself, cannot be ruled out. There being some quarrel on 19.06.83, she might have consumed poison.

In the aforesaid background, the trial court was of the opinion that the accused cannot be held guilty of the charge levelled against them . Therefore, the prosecution case was not believed by the trial court.

The learned Public Prosecutor, arguing the appeal, submitted that the lady died not of a natural death because poison has been recovered from the viscera . The extra judicial confession has been made, and an eye witness also has been produced, therefore, the trial court should not have taken a charitable view of the prosecution and the material was sufficient to convict the accused.

Replying to the argument of the learned counsel for the State, the learned counsel for the accused respondent, submitted that when the basic case of the complainant was not believed by the prosecution, in police investigation and a complaint was filed , that shows that there was paucity of evidence against the accused persons. The extra judicial confession appears to be an evidence

created by complainants. The medical opinion was not clear about the poison as the basic reason for the death of the deceased. In any case, presence of the husband having been not in the house, he cannot be held guilty under section 302 IPC. There is no evidence about the 2 ladies being not in good terms. Had it been a forcible administration of poison, the deceased would have some traces of poison over her body and, therefore, the learned counsel for the accused submitted that the State appeal deserves to be dismissed.

We have heard the learned counsel and have given our thoughtful consideration to the material available on record.

The basic evidence of extra judicial confession being not consistent in police version and in court statement, it is very difficult to rely on the fact of extra judicial confession being made. It is one of the most easy evidence to create and very difficult to rebutt. The alibi of one of the accused Santa Singh was established. The administration of poison having not been established and being not deposed by the doctor as the cause of death, it is very difficult to rely on it and, therefore, the case against the accused stands on a very weak footing. Eye witness of a weak character has been produced.

In an appeal against acquittal, it is very difficult for us to convert the findings of acquittal into one of conviction, when one possible view has already been taken by the trail court. In that view of the matter, we are not convinced that the acquittal recorded by the trail court is liable to be converted into one of conviction.

Consequently, we feel that the appeal fails and there being no force in the appeal, the appeal is dismissed.

(MUNISHWAR NATH BHANDARI), J. **(BHAGWATI PRASAD), J.**

L.George